



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Board of Physical Therapy, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 112-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Physical Therapy
<b>Action Title:</b>	Continuing competency
<b>Date:</b>	8/9/02

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

Amendments to regulations are required for compliance with Chapters 315 and 858 of the 2001 Acts of the Assembly mandating the Board to promulgate regulations to establish requirements to ensure continuing competency of the practitioners it licenses. The proposed regulations will replace the emergency regulations that went into effect on November 1, 2001 and are identical to those regulations.

## Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

No changes to proposed regulations have been made in the adoption of final amendments.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On August 9, 2002, the Board of Physical Therapy adopted amendments to final regulations, 18 VAC 112-20-10 et seq., Regulations Governing the Practice of Physical Therapy.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law*

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*

5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The legal mandate to promulgate regulations is found in §§ 54.1-3474 and 54.1-3480.1.

**§ 54.1-3474. Unlawful to practice without license; continuing competency requirements.**

- A. It shall be unlawful for any person to practice physical therapy or as a physical therapist assistant in the Commonwealth without a valid unrevoked license issued by the Board.*
- B. The Board shall promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants, which may include continuing education, testing, or such other requirements as the Board may determine to be necessary.*
- C. In promulgating continuing competency requirements, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.*
- D. The Board may approve persons who provide or accredit programs to ensure continuing competency.*

**§ 54.1-3480.1. Continuing education.**

*As a prerequisite to renewal of a license or reinstatement of a license, each physical therapist shall be required to take biennial courses relating to physical therapy as approved by the Board. The Board shall prescribe criteria for approval of courses of study and credit hour requirements. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed physical therapist at the time he applies to the Board for the renewal or reinstatement of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.*

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

Chapters 858 and 315 of the 2001 Acts of the Assembly amended the physical therapy practice act by mandating that the Board promulgate regulations for the establishment of continuing competency requirements. To carry out that mandate, the Board established an advisory committee to study the type and amount of continuing education to be required, review what other states require, and develop a recommendation for the adoption of emergency regulation.

In promulgating regulations for continued competency of physical therapy licensees, the Board considered the mandate of the General Assembly to adopt regulations that would address a) the need to promote ethical practice, b) an appropriate standard of care, c) patient safety, d) application of new medical technology, e) appropriate communication with patients, and f) knowledge of the changing health care system.

The goal of the Board was to develop requirements that would: 1) encourage learner-directed continuing education through which a practitioner can identify a practice question or problem, seek the learning activity which provides needed information or teaches a new skill, and thereby,

enhance his expertise or ability to practice; 2) offer a choice of content and form that is flexible enough to meet the needs of physical therapists and physical therapist assistants in a variety of practice settings in any location in Virginia; and 3) assure the public that therapists have maintained their skills and competencies in order to protect the public health, safety and welfare.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The Ad Hoc Advisory Committee recommended and the Board adopted a requirement which consists of a total of 30 contact hours per biennium as follows: (1) Physical therapists must have at least 15 and physical therapist assistant at least 10 hours of Type 1, face-to-face continuing education, which must be offered by an approved sponsor or organization that provides documentation of hours to the practitioner. The hours may include formal course work, in-service training, or other educational experience; and (2) No more than 15 hours required for physical therapists and no more than 20 hours required for physical therapist assistants may be in Type 2 continuing learning activities, which may or may not be approved by a sponsor or organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning; therapists document their own participation on form provided by the Board. There are also rules for maintaining documentation of continuing education, auditing, extensions and exemptions. Evidence of continuing competency hours would be required for reinstatement of a lapsed license or reactivation of an inactive license.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

### **Advantages to the licensees:**

The continuing competency requirements are intended to provide some assurance to the public that licensees of the Board are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to licensees. The Board believes that the majority of PT's and PTA's already obtain sufficient hours of continuing competency activities or courses in a biennium. Physical therapists who work for organizations are often required to take in-service training or continuing education for employment. Only 15 of the hours for PT's and only 10 of the hours for PTA's must be offered by a recognized sponsor, the other hours may be acquired by the practitioner on his own time and schedule. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

### **Disadvantages to the licensees:**

For a small minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. However, it was determined by enactment of the statute and by the Board's concurrence that those practitioners and their patients would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort.

**Advantages or disadvantages to the public:**

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the licensees for the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients. The public is also better served by a continuing competency requirement for licensees who have allowed their license to lapse or have been inactive.

**Advantages or disadvantages to governmental agencies:**

Government agencies that employ physical therapists may incur additional costs if they elect to hire individuals to present workshops or seminars to their staff or to pay for continuing education. The Board will incur additional costs to monitor compliance of licensees, and to hold additional disciplinary hearings for individuals who do not comply with the requirement.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

A public hearing was held before the Board of Physical Therapy at the Department of Health Professions in Richmond on July 12, 2002. No comment was presented at that time nor was any written or electronically submitted comment received during the public comment period from May 20, 2002 to July 19, 2002.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

The amended sections are as follows:

**18 VAC 112-20-10. Definitions.**

New definitions are given to provide clarity for terms used in the continuing competency regulations. Terms defined include: “contact hour,” “face-to-face,” “type 1,” and “type 2.”

**18 VAC 112-20-130. Biennial renewal of license.**

Added to the requirement of hours of practice to renew an active license is the requirement to comply with continuing competency requirements.

**18 VAC 112-20-131. Continued competency requirements for renewal of an active license.**

This new section of regulation sets requirement for renewal at 30 contact hours of continuing learning within the two years immediately preceding renewal. The 30-hour requirement is divided between Type 1 hours which must be offered by an accredited sponsor and which must be face-to-face or interactive hours and Type 2 hours which may be selected by the practitioner as valuable to continued learning in his practice.

Organizations approved by the Board as accredited sponsors or providers for Type 1 courses are listed in subsection B and include physical therapy associations, governmental agencies, accredited colleges and universities, accredited health care entities, the American Medical Association and the national athletic trainers’ association. Specialty certification or re-certification may suffice as evidence of continued competency for the renewal period in which that occurs.

Regulations further provide for an exemption from continued competency requirements in the first renewal cycle following initial licensure, waiver of requirements for certain conditions, or an extension of time for good cause shown and upon request from the licensee. There are requirements for a random audit of licensees and for the retention of documentation for a period of at least four years.

**18 VAC 112-20-135. Inactive license.**

An amendment is adopted to add a requirement for evidence of completion of the number of continued competency hours that would have been required for the period the license was inactive, not to exceed four years.

**18 VAC 112-20-136. Reinstatement requirements.**

The reinstatement requirement for practice in another jurisdiction or completion of an inactive practice traineeship has been found in subsection A of 18 VAC 112-20-140. The amended regulations place that requirement in section 136 and add the requirement for completion of continued competency hours similar to that required for reactivation of an inactive license.

**18 VAC 112-20-140. Traineeship required.**

The subsection related to reinstatement of a lapsed license has been deleted in this section and included in new section 136.

**The Continued Competency Activity and Assessment Form** provides instructions to the licensees for compliance with regulations and completion of the form on which hours are documented.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

In its analysis of the regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. To the extent physical therapists and physical therapist assistants would be required to pay a fee to obtain continuing competency courses or activities, there may be some very modest reduction in disposable income.